

Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of	)	
	)	ET Docket 01-278
Review of Part 15 and Other Parts	)	RM-9375
of the Commission's Rules	)	RM-10051

**MOTION FOR STAY**

July 26, 2002

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**MOTION FOR STAY**

Pursuant to Sections 1.44(e) and 1.106(n) of the Commission's Rules, the following members of RADAR submit this Motion for Stay in this proceeding:<sup>1</sup> BG Tech America, Inc.; Bel-Tronics; Cobra Electronics Corp.; Escort Inc.; SK Global America, Inc.; and The Whistler Group.

**URGENT:** *Action on this Motion is required before approximately September 1, 2002.* Simultaneously with this Motion, RADAR Members are filing a Petition for Partial Reconsideration (Petition) that challenges deadlines at 30 and 60 days after publication of the First Report and Order in the Federal Register.<sup>2</sup> Those dates are likely to fall in early September and October, respectively. Without a stay, the Petition will become moot long before it can be decided.<sup>3</sup>

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<sup>1</sup> *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, First Report and Order, FCC 02-211 (released July 19, 2002). RADAR (Radio Association Defending Airwave Rights, Inc.) is a nonprofit organization that seeks to protect motorists' rights to own and use radar/laser detectors, educates the public about police traffic radar/laser and radar/laser detectors, and promotes use of the 24.1 GHz safety radar technology.

<sup>2</sup> First Report and Order at para. 15.

<sup>3</sup> In the interest of a prompt resolution, we have served this Motion and the accompanying Petition on the satellite interests listed in Appendix B of the First Report and Order.

**A. The Implementation Deadlines in the First Report and Order are Infeasible, Unprecedented, and Unnecessary.**

The First Report and Order requires radar detectors manufactured domestically or imported into the United States to comply with new technical rules beginning 30 days after publication in the Federal Register.<sup>4</sup> All radar detectors marketed in the United States, including those sold at retail, must comply beginning 30 days later.<sup>5</sup>

As we show in the Petition and summarize below, this schedule is infeasible, unprecedented, and unnecessary. RADAR proposes that manufacture and import be required to comply by December 31, 2002, and that the distribution pipeline be left to empty at its own speed. Alternatively, if the Commission requires a date certain for retail compliance, we propose July 1, 2003. RADAR Members will continue using their best commercial efforts to minimize the number of noncompliant units actually shipped between now and December 31.

**1. The Commission's schedule is not feasible.** In February, responding to reports of interference from radar detectors into VSAT receivers, RADAR Members unilaterally began implementing the same technical standards later adopted in the First Report and Order. Our target in February was 100% compliance by June 1, 2003.<sup>6</sup> Last month we notified the

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<sup>4</sup> First Report and Order at para. 15.

<sup>5</sup> *Id.* The Commission will permit retroactive exterior labeling of certified product for a limited time. First Report and Order at 17.

<sup>6</sup> Comments of RADAR Members at 5 (filed Feb. 12, 2002).

Commission we were running ahead of schedule, with 73% of product then being shipped in compliance, and full compliance due by January 2003.<sup>7</sup>

That schedule can be achieved, but the one in the First Report and Order cannot. The accompanying Petition explains why. The manufacturing process requires redesign, retooling, and parts acquisition, typically different for each model. That process is well underway, but still has several months to run. Import basically consists of manufacture plus shipment, which in our case (from Asia, by sea) takes several weeks, so compliance for imports tends to run behind domestic manufacture. And compliance at the retail level needs time for the distribution pipeline to flow through -- averaging about 2-4 months for the larger outlets, but up to a year or more for the small ones.

The Commission's marketing deadline, 60 days after publication, will find the retail stores holding a mixture of product: compliant and not; certified and not; labeled and not. Ideally each store would check each item in stock against manufacturer-provided lists of makes, models, and serial numbers, so as to return noncompliant product, and label certified but unlabeled product. But in fact most stores will not free up personnel for the task. Instead they are far more likely to return the entire stock to the manufacturers, with an invitation to ship back the units that comply. This will almost certainly shut down some manufacturers, and possibly the industry as a whole.

**2.      *The Commission's schedule has no precedent.*** We cannot find a prior case where the Commission regulated consumer products on a schedule comparable to this one --

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<sup>7</sup> Letter from Mitchell Lazarus to Marlene H. Dortch, Secretary, FCC (filed June 11, 2002), Attachment at 1.

especially a product regulated for the first time. These are examples of previous deadlines imposed on regulated consumer devices:

Expansion of CB radio from 23 to 40 channels <sup>8</sup>	Manufacture: 12 months Retail marketing: 17 months
Initial regulation of personal computers <sup>9</sup>	Manufacture: 13 months Retail marketing: no time limit
Regulation of scanning receivers (for cell phone privacy) <sup>10</sup>	Manufacture: 12 months Retail marketing: no time limit
Tightened regulation of scanning receivers (same) <sup>11</sup>	Manufacture: 6 months Retail marketing: no time limit

The schedule proposed by RADAR -- manufacture and import in 5 months; distribution either unregulated or (less preferably) cut off at after 12 months -- is still more demanding than any the Commission has ever imposed for a consumer product.

### ***3. The Commission's schedule is unjustified.***

Most units now being shipped are compliant. And most radar detector sales are upgrades, which take noncompliant units out of service and replace them with compliant ones. The

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<sup>8</sup> *Revision of Part 15 to Extend the Receiver Certification Program, to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 F.C.C.2d 687, 693 (1976), *clarified*, 62 F.C.C.2d 623 (1976).

<sup>9</sup> *Amendment of Part 15 to Redefine and Clarify the Rules Governing Restricted Radiation Devices and Low Power Communication Devices*, 79 F.C.C.2d 67, 90 (1980), *modifying* 79 F.C.C.2d 28, 56 (1979).

<sup>10</sup> *Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), *recon. denied*, 9 FCC Rcd 3386 (1994).

<sup>11</sup> *Amendment of Parts 2 and 15 to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), *recon. on other grounds*, 16 FCC Rcd 11373 (2001).

Commission's schedule would disrupt the distribution chain and slow or stop upgrade sales. In that event users will simply hang on to their older units, and thus unnecessarily risk continuing interference. A stay will significantly *reduce* the number of noncompliant units in use, by allowing upgrades to continue.

**B. This Request Meets the Legal Conditions for a Stay.**

The Commission evaluates requests for stay under four principles. The petitioner must show (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if the stay is not granted; (3) other parties will not be harmed by a stay; and (4) a stay is in the public interest.<sup>12</sup> This request meets each of those tests.

*(1) Likelihood of prevailing on the merits.* Our Petition shows the Commission's implementation schedule is infeasible as a practical matter, is far more stringent than the Commission has ever imposed on a consumer product, and threatens damage to the industry. We do not believe the Commission intended these outcomes. Because the Notice proposed neither rules for radar detectors nor an implementation schedule,<sup>13</sup> this filing (and the accompanying Petition) is our first opportunity to provide factual input on likely consequences of the schedule, and to note the precedents for regulating consumer devices. Taken together, this information makes a compelling case for rethinking the schedule.

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<sup>12</sup> *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F. 2d 921, 925 (D.C. Cir. 1958).

<sup>13</sup> *See Review of Part 15 and other Part of the Commission's Rules*, 16 FCC Rcd 18205 at para. 14 (2001).

But the Commission should grant a stay even if doubts remain as to RADAR's ultimate likelihood of success. The Commission has held:

[T]he degree to which a probability of success on the merits will be found varies according to the Commission's assessment of the other factors. *When confronted with a case in which other elements strongly favor interim relief, the Commission may exercise its discretion in determining whether to grant a stay.*<sup>14</sup>

Here, each of the other three elements strongly favors relief. The Commission should grant the stay even if the eventual outcome is uncertain.

**(2) Irreparable harm in the absence of a stay.** We explain in the Petition that the Commission's schedule would very likely result in massive returns from retailers and distributors -- not only of noncomplying product, but also of certified product, because stores will not take the trouble to tell them apart. This event would almost certainly shut down some manufacturers, and possibly the industry as a whole. The consequences would affect not only the stockholders and workers of the companies that fail, but also the communities where those workers live and shop.

**(3) No harm to other parties.** As noted above, our proposed slower schedule will actually *reduce* the number of noncomplying units in service. Well over half of radar detectors sold are upgrades that replace units already in service. Even today, most of the upgrades take out noncomplying units and replace them with ones that comply. Our requested schedule thus yields a significant reduction in potentially interfering units in service. If the

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<sup>14</sup> *Brunson Communications, Inc.*, 15 FCC Rcd 12883 at para. 2 (2000) (citation footnote omitted; emphasis added), *citing Cuomo v. NRC*, 772 F. 2d 972, 974 (D.C. Cir. 1985); *Wisconsin Gas Co. v. FERC*, 758 F. 2d 669, 674 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours*, *supra*, 559 F. 2d 841, at 843-44.

Commission's schedule disrupts stores' handling even of compliant units -- and worse, jeopardizes manufacturers' ability to provide compliant product -- users will keep their present units, with a consequent higher risk of interference.

**(4) *Public interest in a stay.*** For the reasons just noted, a stay will reduce VSAT interference overall. Moreover, it will prevent local economic disruption from radar detector business failures. Finally, we note the Commission could not have considered imposing the present schedule unless the industry were already well on the way to compliance, on a voluntary basis. For the Commission now to deny a stay and maintain its unworkable schedule would penalize the industry for taking its own affirmative steps to resolve the problem. This will discourage future parties accused of interference from promptly beginning work to fix problems on their own.

### **CONCLUSION**

The Commission has required a schedule the industry cannot meet, and which is without precedent in the regulation of consumer products. The schedule we request in the Petition is still tighter than the Commission has ever imposed, but it will permit an orderly transition to a regulated environment. Grant of a stay is necessary for timely action on the Petition.



The requested stay meets all of the applicable legal requirements. In particular, a stay is in the public interest because it will permit the upgrade process to continue reducing the number of interfering units in service.

Respectfully submitted,

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July 26, 2002

**CERTIFICATE OF SERVICE**

I certify that I have caused copies of the foregoing "Motion for Stay" to be transmitted by U.S. mail to the persons shown on the attached Service List, except that persons marked with an asterisk were served by email and hand delivery.

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